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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 511

EDWARD J. SIMONS, ET AL.,
Petitioners,

vs.

JERRY VINSON and A. P. CLARK, ET AL.,
Respondents.

REPLY TO BRIEFS OF RESPONDENTS IN OPPOSITION

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ARGUMENT

The Admissions of the Federal Respondents Show This Case Seeks No Contest of Title with the United States.

Beginning with the last sentence, page 5, federal respondents' brief, we quote:

"And the present controversy does not involve a dispute as to the meaning of this Court's decree—both parties recognize that Texas riparian landowners are entitled to the benefits of accretion. The only question in conflict is whether an accretion has taken place."

1. This position freely admits that title to an accretion is not in dispute. It is admitted to belong to Texas riparian landowners. Therefore, clearly there is no contest of title between the petitioners and the United States.

2. The "sovereign immunity" asserted by the federal respondents is an immunity to be freed from the "conflict" of "whether an accretion has taken place." That they have no such freedom from contest is demonstrated by the fact that such freedom from contest would permit them to violate federal law—the Red River Acts, the Boundary Treaty and the Decrees of this Court. They propose to halt even the United States Constitution, because, if there be an accretion, refusal to obey these federal laws constitutes a confiscation of the petitioners' property without just compensation. Petitioners cannot obtain compensation in the Court of Claims or any other special court simply because no implied contract can arise from seizure unwarranted and unauthorized by any federal law.

The argument that the federal respondents have been immunized from the "conflict" of "whether an accretion has taken place" is answered and refuted by the case of *Philadelphia Co.* v. *Stimson*, 223 U.S. 605. Moreover, the decision of the Court of Appeals is contrary to *Stimson*. In *Stimson*, this Court held that the Secretary of War could not invoke sovereign immunity to prevent the plaintiff from showing a water boundary had not changed because the changed water line was caused by *avulsion*. If the change had been caused by avulsion the boundary had not changed.

The Secretary's action would have been in violation of federal law and ultra vires. The Court said that even if there was presented a title question the dominant question was one of the Secretary's authority and he could not use sovereign immunity to prevent plaintiff from showing the *fact* which would have made his action ultra vires. The *Larson* court approved of this decision. By footnote, it quoted the crucial sentence, viz:

> "While the complainant's title lay at the foundation of the suit, and it would be necessary for the complainant to prove it, if denied, still if its title to the lands under water were established or admitted to be as alleged, the question would remain whether the defendant in imposing restrictions upon the use of the property was acting by virtue of authority validly conferred by a general act of Congress. This was the principal question which the complainant sought to have determined." [Footnote 23, 337 U.S. 700, *Larson* case.]

3. This case is a suit to halt the respondents' continued violation of the boundary Treaty and boundary decrees, which until restrained, is also a violation of the Fifth Amendment of the United States Constitution.

CONCLUSION

The Courts below have done violence to the decrees of this Court. In so doing the Constitution of the United States has been breached. Manifest reason is shown why this Court should grant certiorari. This Court must protect its own decrees and protect the Constitutional right of the citizen to have his constitutionally guaranteed day in Court to halt violation of federal law.

Jurisdiction is the judicial exercise of power to determine jurisdiction.

Respectfully submitted,

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